

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)	CFTC Docket No: <u>03-15</u>
)	
)	
Terry Edward Jones)	ORDER INSTITUTING PROCEEDINGS
)	PURSUANT TO SECTIONS 6(c) and 6(d) OF
)	THE COMMODITY EXCHANGE ACT, AS
Respondent.)	AMENDED, MAKING FINDINGS AND
)	IMPOSING REMEDIAL SANCTIONS
)	

I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Terry Edward Jones ("Jones" or "Respondent") has violated Sections 4m of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6m (1994), and Section 4.41(b) of the Commission's Regulations ("Regulations"), 17 C.F.R. § 4.41(b) (2002). Consequently, the Commission deems it appropriate and in the public interest that an administrative proceeding be, and hereby is, instituted to determine whether Jones has engaged in the violations set forth in this Order, and whether an Order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact or conclusions of law in this Order and prior to any adjudication on the merits, Respondent acknowledges service of this Order. Respondent consents to the use of the findings in this Order in this proceeding and in any other proceeding brought by the Commission, or to which the Commission is a party.¹

¹ Respondent does not consent to the use of the Offer or this Order, or the findings to which he has consented in the Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. He does not consent to the use of the Offer or this Order by any other person or entity in this or any other proceeding. The findings to which he has consented in the Offer, as contained in this Order, are not binding on any other person or entity named as a respondent or defendant in this or in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

Between November 2000 and August 2001, Jones successfully solicited 16 clients to open commodity trading accounts. Jones managed the trading in all of these accounts. Most, if not all, of those accounts remained open until December 2001. For his advisory services, Jones was to receive a portion of any trading profits realized for his clients. By managing commodity futures trading accounts for others for profit, Jones acted as a Commodity Trading Advisor ("CTA"). As such, he was required to be registered with the Commission. However, Jones was not registered, and thus, Jones violated Section 4m(1) of the Act.

In June 2001, Jones advertised in Investor's Business Daily to solicit clients for his CTA business. Through his advertisement, Jones held himself out to the public as a CTA. As part of his advertisement for his services, Jones provided a trading record that was based on hypothetical trading. Jones, however, failed to include the disclosure concerning the limitations of hypothetical trading results required by the Commission's Regulations. Accordingly, Jones violated Regulation 4.41(b).

B. RESPONDENT

Terry Edward Jones, who resides at 350 Emmett Way, Bristol, Tennessee 37620, has never been registered with the Commission in any capacity.

C. FACTS

Between November 2000 and August 2001, at least 16 customers opened commodity trading accounts and granted Jones discretion to trade their commodity futures accounts. Jones contracted to receive a portion of his clients' futures trading profits as his fee for his advisory services. Over a three to six month period, Jones's trading resulted in losses for each of his clients and, accordingly, Jones did not in fact receive any payment for his services.

In June 2001, Jones placed an advertisement in Investor's Business Daily, which ran five days, to solicit clients to open commodity futures trading accounts that he would manage. In his advertisement, he included the following trading record: "40K to 400K since [sic] January 1st." Jones did not disclose in his advertisement that these results were based on hypothetical trading and did not provide a disclosure, as required by the Commission's regulations, concerning the inherent limitations of hypothetical trading results.

D. LEGAL DISCUSSION

A. Jones violated Section 4m(1) of the Act by Failing To Register As A Commodity Trading Advisor

Section 1a(6)(A) of the Act defines a CTA as someone who:

for compensation or profit, engages in the business of advising others either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in . . . any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility

Section 4m(1) of the Act makes it unlawful for a CTA, unless registered as such under the Act, to make use of the mails or instrumentalities of interstate commerce in connection with his business as a CTA, unless he has not provided commodity trading advice to more than 15 persons during the preceding 12-month period, and has not held himself out generally to the public as a CTA.

Jones acted as a CTA by managing and/or trading the commodity futures accounts of at least 16 clients. In exchange, he was to receive payment for his services. As such, Jones, for compensation and profit, engaged in the business of advising others as to the value or the advisability of trading in futures contracts. *In re Armstrong*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. ¶25,657 at 40,148 (CFTC Feb. 8, 1993) (publisher of monthly newsletter which also offered personal consultations and managed futures accounts gave commodity futures trading advice), *vacated on other grounds*, 12 F.3d 401 (3d Cir. 1993); *Gaudette v. Panos*, 644 F. Supp. 826, 839 (D. Mass. 1986) *rev'd on other grounds* 852 F.2d 30 (1st Cir. 1988) (defendants held to be CTAs where they represented their advisory skills to be exemplary, suggested that plaintiffs open a commodity account and then recommended certain futures contracts for investment).

In addition to providing commodity trading advice to more than 15 persons, Jones held himself out to the public as a CTA without being registered as such. *In re Armstrong*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. at 40,151 (holding oneself out as a CTA occurs "through such conduct as promoting advisory services through mailings, directory listings, and stationery, or otherwise initiating contacts with prospective clients."); *Interpretive Letter No. 91-9* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) P25,189 (Dec. 30, 1991). Thus, Jones could not avail himself of the exemption from registration set forth in 4m(1).

Moreover, by using the telephone, e-mails and postal service to communicate with his clients and prospective clients, Jones used instrumentalities of interstate commerce in connection with his CTA business. Accordingly, Jones acted as a CTA and was required to be registered as a CTA, and his failure to do so constitutes a violation of Section 4m(1) of the Act.

B. Jones violated Section 4.41(b) of the Commission's Regulations By
Failing to Provide Mandatory Disclosure Concerning Hypothetical Trades

Section 4.41(b)(1)-(2) of the Regulations specifically requires that any advertisement presenting hypothetical performance results of a CTA must prominently display a cautionary statement alerting clients and prospective clients to the limitations inherent in hypothetical performance results. This disclaimer serves to "alert clients to the limited predictive value" of hypothetical performance results, and the failure to include the cautionary statement in advertisements touting hypothetical performance results is a violation of Section 4.41(b). *In re Armstrong*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. ¶26,332 at 42,612 (CFTC March 10, 1995); *see also Commodity Futures Trading Comm'n ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923 (E.D. Mich. 1985) (performance tables representing hypothetical and perhaps fictitious performance results were in violation of § 4.41(b) because they were not accompanied by the required cautionary statement).

Jones's advertisement in Investor's Business Daily included a trading record that was based on hypothetical trading results but did not include the warning specified and required by Regulation 4.41(b). Therefore, Jones violated Regulation 4.41(b).

IV.
OFFER OF SETTLEMENT

Jones has submitted an Offer of Settlement in which he admits the jurisdiction of the Commission with respect to the matters set forth in this Order and acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to injunctive or administrative proceedings under the Act. Jones waives the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order or any other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to, or arising from this action.

Jones stipulates that the record basis on which this Order is entered consists solely of the findings in this Order, the entry of which he has consented to in his Offer. Jones consents to the Commission's issuance of this Order, which makes findings, as set forth herein, and orders that: (1) Jones cease and desist from violating Section 4m of the Act and Section 4.41(b) of the Regulations; (2) Jones is subject to a two-year ban from trading on registered entities; (3) Jones shall comply with his undertakings as set forth in his Offer and incorporated in this Order including: (a) not to apply for registration or seek exemption from registration with the Commission in any capacity for two (2) years from the date of this Order, except as provided for in Regulation 4.14(a)(9), and not to engage in any activity requiring registration or exemption from registration for two (2) years from the date of this Order, unless such exemption is pursuant to Regulation 4.14(a)(9); and (b) never to take any action or make any public statement denying,

directly or indirectly, any finding or conclusion in this Order or creating, or tending to create, the impression that this Order is without a factual basis.

**V.
FINDINGS OF VIOLATIONS**

Solely on the basis of the consent of Jones as evidenced by his Offer, and prior to any adjudication on the merits, the Commission finds that Jones violated Sections 4m of the Act, 7 U.S.C. § 6m and Section 4.41(b) of the Regulations, 17 C.F.R. § 4.41(b).

**VI.
ORDER**

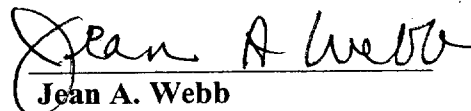
Accordingly, IT IS HEREBY ORDERED THAT:

- A) Jones shall cease and desist from violating Section 4m of the Act; 7 U.S.C. § 6m and Section 4.41(b) of the Regulations, 17 C.F.R. § 4.41(b).
- B) Jones is prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse Jones all privileges thereon for a period of two years from the date of this Order; and
- C) Jones shall comply with the following undertakings:
 - 1) Jones shall not take any action or make any public statement denying, directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision effects Jones's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party and;
 - 2) for a period of two years from the date of this Order, Jones shall not apply for registration, seek exemption from registration, engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, or act in any capacity or affiliate in any way with any individual or entity that is registered, is required to be registered, or is exempt from registration with the Commission, except as provided for in Section 4.14(a)(9) of the Commission's Regulations.

Unless otherwise specified, the provisions of this Order shall be effective on this date.

Dated: June 30, 2003

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Jean A. Webb", is written over a horizontal line.

Jean A. Webb

Secretary of the Commission

Commodity Futures Trading Commission